

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 13-52-0140

Parcel No. 06-36-453-002

Dillard's Inc.,

Appellant,

vs.

Johnson County Board of Review,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on June 9, 2015. Attorney Bruce W. Baker of Nyemaster Goode, PC, Des Moines, represented Dillard's, Inc. Attorney John E. Lande of Dickinson, Mackaman, Tyler, and Hagen, PC, Des Moines, represented the Johnson County Board of Review.

The subject property is a Dillard's retail department store anchor in the Coral Ridge Mall located at 1411 Coral Ridge Avenue, Coralville. It was built in 1998 at the same time as the Mall. It is one of five occupied Mall anchors. (Ex. 1, p. 10). According to the record, the improvements are 129,581 square feet. The site is 11.85-acres and has 289,000 square-feet of paved parking. (Ex. A).

In 2013, the property's assessment was \$10,400,000, allocated as \$4,481,400 in land value and \$5,558,600 in improvement value. Dillard's protested the assessment to the Board of Review contending it was assessed for more than authorized by law under Iowa Code section 441.37(1)(a)(2). The Board of Review reduced the assessment to \$9,880,000. Dillard's then appealed to PAAB. It contends the property's value is \$5,800,000.

Findings of Fact

Dillard's asserts the subject property is over assessed, that it has shifted the burden with two competent appraisals, and that the board of review has failed to support the assessment. The Board of Review, to the contrary, believes it has upheld its burden and the assessment should be affirmed.

Greazel Testimony

Johnson County Assessor Bill Greazel testified for the Board of Review and provided a background of the assessment. He explained his office contracted with Mark Kenney to complete an appraisal for the 2013 assessment of the Dillard's as well as the rest of the Mall. Greazel testified that Kenney's conclusion of value was used as the assessment. Kenney's conclusions were entered into the computer assisted mass appraisal (CAMA) software system and income numbers were generated to approximate Kenney's opinion of value. (Ex. A, p. 4). When pressed for clarification about the development of the income approach for the assessment, Greazel acknowledged the numbers in the income approach do not have any relevance and reiterated that his office selected the income numbers solely to arrive at an assessment consistent with Kenney's conclusions. Moreover, the Assessor's Office did not complete an independent market analysis or rent study.

Greazel stated he is familiar with Coral Ridge Mall and considered it a "very healthy" mall from a financial standpoint. He bases this opinion on his knowledge that when the mall opened, it was fully occupied; and it has maintained high occupancy. To his knowledge, it is currently 94% to 95% occupied.

Greazel testified that he believed the Sears closure had nothing to do with the Coralville or Iowa City market; rather, it was a corporate downsizing of Sears nationwide. He stated the Sears anchor space remained vacant for some time due to business decisions by the owners of the Mall, General Growth.

Appraisals

Dillard's submitted two independent appraisals of the property completed by Ted Frandson of Frandson & Associates, LC, Des Moines, and Glenn Garoon of Glenn Garoon Real Estate, Fort Worth, Texas. (Exs. 1 & 2). Both appraisers testified at hearing.

The Board of Review also submitted an appraisal completed by Mark T. Kenney of American Valuation Group, Inc, Lansdale, Pennsylvania. (Exhibit D). Kenney also testified at hearing. The following chart summarizes appraisers' conclusions.

Appraiser	Sales Approach	Income Approach	Cost Approach	Final Opinion of Value
Frandson	\$5,800,000	Not Developed	Not Developed	\$5,800,000
Garoon	\$6,500,000 to \$7,000,000	\$6,000,000	\$6,902,000	\$6,100,000
Kenney	\$10,400,000	Not Developed	Not Developed	\$10,400,000

The Frandson Appraisal

Frandson testified regarding the general mall market. He asserts there has been a migration of investors away from enclosed regional malls, in part because of the cost of operation and because of lower shopper demand for this shopping model. Frandson also noted there are limited expansion and some retraction in shopping malls because of the uptick in on-line shopping, which results in lower retail sales for the physical stores and subsequently flat rent levels.

In his opinion, a regional mall, like the subject, should be looked at as a whole because the anchors are the traffic generators to the mall. He explained that it takes below cost rents to attract anchors, and that it is "almost universal" for mall developers to offer significant incentives such as gifting the site, or offering free or reduced rents as examples of enticement.

Moreover, Frandson notes the Construction Operating and Reciprocal Easements Agreements (COREA) between the mall owner and storeowner affect the value of a property. Frandson explained the COREA can be a long document that can include restrictions on the storeowner like hours of operation and ingress and egress

requirements. For these reasons, Frandson explained he does not consider freestanding stores, which are not subject to specific lease restrictions, for comparison to mall anchors.

Frandson testified that the subject mall is stable, but he does not consider it an “A” property because the sale levels are below that of malls in larger markets. Frandson did note, however, that all of the communities comprising the metro area around Coral Ridge Mall have had a rising percentage of retail sales since 2000. (Ex. 1, p. 30). He also agreed with the Board of Review that the Mall had 93% to 95% occupancy of inline tenants.

Frandson completed only the sales comparison approach to value. His conclusion is depicted in the chart below.

Sales Approach	Income Approach	Cost Approach	Final Opinion of Value
\$5,800,000	Not Developed	Not Developed	\$5,800,000

Frandson testified that when he inspected the property, “everything was original,” such as the roof, heating and cooling (HVAC) systems, and parking lot. He noted the roof was in disrepair, which has caused widespread leaking and damage to the interior acoustic tiles and drywall. (Ex. 1, p. 5). He provided photos of the roof and interior water damage to support his observations. (Ex. 1, pp. 19-21). He considered the condition to be below average. (Ex. 1, p. 5). We note Frandson’s emphasis on the interior water damage appears to overstate the subject property’s issue and contradicts Garoon’s appraisal. Garoon noted that subsequent to the assessment, the roof was repaired “with a minimal amount for interior repairs.” (Ex. 2, p. 20).

Frandson testified that although he typically considers all three approaches to value, he only develops them if he determines they are relevant to the assignment. He did not develop the cost approach because he believes there are limited land sales to use for comparison because mall developers typically gift the land to the anchor stores. Further, in his opinion, the subject improvements have significant obsolescence in addition to physical depreciation. (Ex. 1, p. 35).

Frandsen testified that he did not complete the income approach because the subject property is owner-occupied and there are few comparable leases available for analysis. (Ex. 1, p. 97).

In developing the sales approach, Frandsen testified he found plenty of anchor department store sales in good viable malls that, in his opinion, were better than the subject mall. The sales were from an owner-occupant to an owner-occupant or buybacks from the mall for resale or re-leasing to another tenant or anchor. Frandsen found very few Iowa transactions apart from sales of vacant mall anchor stores or bulk sales, and therefore, expanded his search to Midwest and national sales of anchor stores. Frandsen also explained he excluded any freestanding stores and sales in declining malls. (Ex. 1, pp 37-38).

The following chart is a brief presentation of the sales Frandsen selected for analysis.

	Location	Date of Sale	Sale Price	Gross Building Area (GBA)	SP/GBA	Adjusted SP/GBA
Subject	Coralville, IA			129,581		
Sale 1	Colonial Heights, VA	Sep-12	\$3,000,000	86,396	\$34.72	\$32.98
Sale 2	Louisville, KY	Jul-13	\$6,000,000	120,000	\$50.00	\$52.50
Sale 3	Alpharetta, GA	Nov-10	\$4,000,000	117,750	\$33.97	\$33.97
Sale 4	Miami, FL	Dec-10	\$5,000,000	100,172	\$49.91	\$47.41
Sale 5	Frisco, TX	Oct-07	\$10,170,800	220,000	\$46.23	\$38.83
Sale 6	Evansville, IN	Jan-07	\$9,000,000	180,000	\$50.00	\$48.00
Listing A	Rapid City, SD	N/A	\$2,500,000	101,500	\$24.63	\$40.03

Sale 1 was a Dillard's that sold to a mall owner for the expansion of a Dick's Sporting Goods. (Ex. 1, pp. 44-52). This sale is located in a much larger community; however, because of its location, there are also other mall competitors. Although this is an older property, Frandsen considered it superior in condition and adjusted it downward 5% for this factor. When questioned, Frandsen agreed that the mall owner might be motivated to purchase the space even when it has a specific user in mind, but he believes it was reasonable to use the sale. Further, he agreed that since the mall

owner was the purchaser, and would likely have to remodel the area for a new tenant, it might have resulted in a lower sales price to reflect anticipated remodeling costs.

Sale 2 was an anchor in Louisville, Kentucky. It is in a larger and stronger metropolitan area (MSA) and located immediately off Interstate 65. (Ex. 1, pp. 53-62). He testified this market was “at least as good” as the subject market. This sale was formerly a Lord & Taylor and is now a Dillard’s. He explained that Dillard’s not only stayed in this mall, but expanded. When questioned, Frandson agreed that although the sale date was reported as July 2013, it was actually negotiated in 2008.

Sale 3 was a former Belks that sold to Von Maur. It is located in a suburb of Atlanta and Frandson identifies it as a good mall in a good area with upscale income and demographics. (Ex. 1, pp. 63-68). Von Maur purchased the property from Belks, which had trouble competing with Macy’s also located in this mall. Similar to Sale 1, Frandson agreed the new user in this case would likely incur some improvement costs, and could have affected the purchase price of the space.

Sale 4 is a Dillard’s in Miami near the airport; Kohl’s purchased it for continued use as a department store. (Ex. 1, pp. 69-74). In Frandson’s opinion, this sale is located in a much larger market, but there is more competition as well.

Frandson testified that Sale 5 is located in a Dallas suburb, the fastest growing city in the United States in 2009, with a median household income over \$100,000. He noted the household income is significantly higher than the Coralville area. This was a new mall in 2000 and Dillard’s bought space in it. (Ex. 1, pp. 75-82).

Sale 6 is located in Evansville, Indiana. Dillard’s purchased the property from Famous Barr. (Ex. 1, pp. 83-89).

Frandson also included Listing A, located in Rapid City, South Dakota, which he considered an inferior location. (Ex.1, pp. 90-95). The seller, Target, moved from this mall to a newer power center. Frandson adjusted it upward 30% because it had an extended vacancy at time of sale. (Ex. 1, p. 39). Ultimately, he did not give the listing any consideration in his final opinion.

Frandson made a downward 20% market condition adjustment to Sales 5 and 6, which both sold in 2007. He based the adjustment on a myriad of articles and research that pointed to fewer mall starts and an increase of internet shopping, which began to

affect rent levels and vacancy rates in the 2007-2008 periods. We note he did not make any market condition adjustments to Sale 2, which he acknowledged was negotiated in 2008 despite actually transferring in 2013. With the exception of Sales 1 and 3, Frandson adjusted his sales for having superior locations compared to the subject property. He also made adjustments for size, age and condition, land-to-building ratio, quality, and functional utility. After adjustments, his price-per-square-foot ranged from \$32.98 to \$52.50. He gave each of the sales some consideration and arrived at an opinion of \$45.00 per-square-foot or \$5,800,000 (rounded).

The Garoon Appraisal

Garoon has not previously been involved in the valuation of a department store; however, he associated with Shannon M. Luepke, who, he states, has experience in this property type. (Ex. 2, p. 2).

Garoon agreed the subject mall was a healthy mall with no tenancy issues. He physically inspected the subject property and identified the improvements as well maintained, but with some minimal deferred maintenance. When he inspected the property, he was aware that the roof had been replaced after the January 1, 2013, assessment date. He considered the condition of the roof in the deferred maintenance section of the cost approach to reflect its actual condition as of the assessment date. (Ex. 2, p. 20).

Garoon completed all three approaches to valuation, and his conclusions of value were as follows:

Sales Approach	Income Approach	Cost Approach	Final Opinion of Value
\$6,500,000 to \$7,000,000	\$6,000,000	\$6,902,000	\$6,100,000

Garoon completed the cost approach to value, but ultimately gave it no weight in his final reconciliation.

He relied on five land sales to determine a site value. He did not quantify adjustments for the differences in the land sales compared to the subject site, but instead relied on a relative comparison (qualitative) method indicating the sales were similar, inferior, or superior to the subject for different elements of comparison. Using

this method, he determined a site value of \$6.25 per-square-foot, or \$3,225,000. (Ex. 2, p. 28).

He then relied on the MARSHALL VALUATION SERVICE to arrive at his replacement cost new for the improvements, which he then depreciated for deferred maintenance for roof repairs and typical deferred maintenance of on-going maintenance items. In his opinion, other than the roof repairs, the improvements had a twelve-year effective age and a thirty-year economic life. He applied 40% depreciation based on a modified age-life method (12 effective age/30 economic life) and an additional \$1,534,122 deduction for external (economic) obsolescence that he measured using the income approach to value. (Ex. 2, p. 29). His conclusion of value by the cost approach is \$6,900,000 (rounded). He testified he gave little weight to this approach because he believes economic obsolescence exists; he reached this conclusion because the cost approach concluded a value much higher than his income and sales approaches.

To develop his income approach, Garoon completed a regression analysis with the assistance of Luepke. Garoon listed twenty-six leases and analyzed them based upon size, sales-per-square-foot, and rent-per-square-foot. (Ex. 2, p. 41). The leases commenced between 1976 and 2012; with fifteen of the leases occurring prior to 2000, and twenty-two occurring prior to 2010.

Garoon selected six leases from this list as the most relevant. (Ex. 2, pp. 42-43). The following chart is a summary of those leases.

	Location	Building Size	Year Lease Commenced	2012 Sales	Total Rent	Rent as a % of sales
Younkers	Omaha, NE	149,400	1991	\$157.27	\$4.52	2.87%
Sears	Pineville, NC	158,650	1991	\$105.13	\$3.95	3.76%
Sears	Philadelphia, PA	187,835	1989	\$126.93	\$4.50	3.55%
JC Penney	Eden Prairie, MN	130,759	1976	\$85.48	\$5.00	5.85%
Dillard's	Plano, TX	197,463	1993	\$85.65	\$2.53	2.95%
Dillard's	Murfreesboro, TN	146,000	2007	\$114.68	\$4.56	3.98%

Garoon explained the rent for this property type is typically a base rent, plus overages. He estimates a stabilized retail sales of \$100 per-square-foot for the subject property and a rent, as a percentage of the sales, at 4% or \$4.00 per-square-foot. He estimates vacancy and collection loss at 3%, and Reserve for Replacement costs at \$0.24 per-square-foot or \$31,099. He concludes a net operating income (NOI) of \$461,619. (Ex. 2, p. 47).

In determining a capitalization rate, Garoon submitted seven sales. (Ex. 2, p. 46). The sales indicate overall rates from 7.41% to 11.05%. He compares these rates to regional malls, national power centers, and national net-leased market properties from the *Korpacz Capitalization Rate Analysis*. (Ex. 2, pp. 46-47). The *1st Quarter 2013 Korpacz Analysis* indicates capitalization rates for these three categories between 6.92% and 7.15%. Garoon notes the two most recent market sales, which occurred in 2008, indicate a capitalization rate between 7.41% and 7.45%. Ultimately, he selects a capitalization rate of 7.75%, which is higher than these conclusions, but within the range of his overall market-derived capitalization rates. His indicated value by the income approach, rounded, is \$6,000,000.

Moving to the sales comparison approach, Garoon testified, like Frandson, regarding the differences between a mall anchor department stores and freestanding department or “big box” stores. He explained that mall anchors commonly receive concessions such as free land, as well as contributions to development costs and interior finish, which freestanding stores do not receive. In his opinion, using freestanding stores could be reasonable if there were a lack of other properties for

analysis; however, he would question the potential differences in property interests and differences in highest and best use. For these reasons he chose not to rely on freestanding department stores.

Garoon submitted ten sales, which are summarized in the following chart.

	Location	Sale Price	Date of Sale	Age	Building Size	Price/SF
Subject	Coralville, IA	N/A	N/A	15	129,581	N/A
1	Dublin, OH	\$10,215,000	Mar-03	7	225,174	\$45.36
2	Lavonia, MI	\$7,452,098	Oct-02	16	150,000	\$49.68
3	Tampa, FL	\$8,000,000	Jun-04	3	139,522	\$57.34
4	Evansville, IN	\$9,000,000	Jan-07	11	180,000	\$50.00
5	West Des Moines, IA	\$8,900,000	Mar-06	2	159,670	\$55.74
6	Frisco, TX	\$10,170,800	Oct-07	8	206,133	\$49.34
7	Pittsburgh, PA	\$17,001,825	May-06	36	258,134	\$65.86
8	Tampa, FL	\$10,175,000	Oct-01	34	160,187	\$63.52
9	Houston, TX	\$8,000,000	May-05	4	138,648	\$57.70
10	Miami, FL	\$5,000,000	Dec-11	26	100,172	\$49.91

Garoon notes that the sales occurred between 2001 and 2011. He testified that he was aware of other more recent sales; but believed the sales were distressed because they sold for prices between \$7.00 and \$30.00 per-square-foot. He did not consider them for this reason.

Garoon relied on a multiple regression analysis, developed by Luepke, for the sales comparison approach. A multiple regression analysis is a statistical method that examines the relationship between more than one independent variable and a dependent variable. Luepke used on sixty-eight department store sales dating back to the 1980's in the development of her multiple regression analysis. (Ex. 2, Addendum). In Garoon's opinion, Luepke's dataset provides a good picture of the market for this property type. When questioned by the Board of Review, he agreed that a regression analysis is dependent on the quantity and quality of the data. In his opinion, about thirty properties are considered to be a good sample to create a regression analysis.

Garoon testified that while he relied on Luepke's regression analysis for the adjustments, the conclusions in the report were his own. He adjusted the sales for differences in market conditions (time), age, building size, land-to-building ratio, condition, and location. (Ex. 2, p. 35). He also testified about the ten sales he relied on, summarized briefly in his report. (Ex. 2, pp. 32-35).

Sale 1 was a former Marshall Fields converted to a Macy's. He reported that within a five-mile radius of Sale 1 the population is about 180,000, more than twice as large as the subject property. We note despite having a population size double that of the subject property, Garoon considered the location similar in his overall analysis and made no adjustment for this factor. (Ex. 2, p. 36). Moreover, though he acknowledged Macy's could have had conversion costs, he did not make any adjustments for this potential factor.

Sale 2 was a Von Maur store but Garoon did not explain what it was used for after purchase. He testified the population around this sale was roughly 209,000. Moreover, he explained a Marriott was attached to this store, which he notes is not a typical feature.

Sale 3 was a Lord & Taylor department store that is currently used as a Lifetime Athletic facility. He acknowledges this is not a typical department store, but does consider it an individual user. He notes this mall is next to the Renaissance hotel in Tampa.

Sale 4 has a surrounding population of 123,000. It is unclear if this store was a Dillard's when it sold or if Dillard's purchased the property.

Sale 5 is a new Younkers store in the Jordan Creek town center in West Des Moines. When questioned, Garoon was unable to identify who sold the property to Younkers or whether this may have been a mall developer sale, which may have affected the sale price. He asserted it did not matter who the seller was as long as the sale was an arm's length transaction. He asserted that if he were aware of an atypical motivation from one of the parties, he would have still used the sale but adjusted for this factor. He admitted he did not confirm the sale, but was comfortable with the source of his data.

Sale 6 is a former Macy's that sold to Dillard's. He testified it is located in a significant growth area north of Dallas. Its five-mile radius population, as of 2010, was roughly 238,700. Despite acknowledging this superior market area, he considers the location similar and makes no adjustment for this factor. (Ex. 2, p. 36). Similar to Sale 1, Garoon agreed that this property might have had some conversion costs incurred by the buyer. In his opinion, this is a common occurrence in retail sales and not reflected in the price. We agree it may be a common occurrence, but also note that when a buyer knows it will incur additional costs it may affect what they were willing to pay for a property.

Garoon testified that Sale 7 should not have been included in the analysis because it was a bulk transaction. He explained that he should have excluded this sale because the conditions of the transaction would be significantly different from a single property sale. Further, he believes there may have been a bankruptcy involved with this transaction that he was unaware of when he wrote his report. He asserts that even after omitting this sale, he still has nine sales that support his conclusions.

Sale 8 was a former Dillard's that sold to Sears. The property's surrounding population is 195,000. Garoon admitted it was possible that this store was "dark" at the time it sold. If so, this may have affected the sale price.

Sale 9 is located in the west part of Houston, which Garoon testifies is similar to the Frisco market in Sale 6. It has a population of 363,000. The sale included a parking deck.

Sale 10 is a Dillard's that sold to Kohls. The population of the surrounding area is roughly 330,000. He explained he was unsure of the actual sale date of this sale and it may have transferred in 2010.

The following chart summarizes the adjusted price-per-square foot of each sale.

	Location	Price/SF	Adjusted Price/SF
1	Dublin, OH	\$45.36	\$52.48
2	Lavonia, MI	\$49.68	\$53.24
3	Tampa, FL	\$57.34	\$52.33
4	Evansville, IN	\$50.00	\$56.34
5	West Des Moines, IA	\$55.74	\$54.87
6	Frisco, TX	\$49.34	\$49.96
7	Pittsburgh, PA	\$65.86	\$53.00
8	Tampa, FL	\$63.52	\$54.87
9	Houston, TX	\$57.70	\$51.49
10	Miami, FL	\$49.91	\$52.95

In Garoon's opinion, the adjusted sales indicate a market value for the subject property between \$50.00 and \$54.00 per-square-foot; or \$6,500,000 to \$7,000,000 by the sales comparison approach.

The Board of Review questioned Garoon's use of dated sales. In response, Garoon testified regarding his knowledge of newer sales, including one he should have included in his analysis in the Mall of St. Matthews, in Louisville, Kentucky, which sold for \$50 per-square-foot. He also testified regarding several sales he excluded from his analysis that were newer sales but he believed were outliers.

Garoon reconciled his three approaches and testified that he gave no consideration the cost approach. He gave most weight to the income approach, with significant consideration to the sales comparison approach and concluded a value of \$6,100,000.

The Kenney Appraisal

Kenney developed a Restricted Appraisal for the Johnson County Assessor to use as the basis of the 2013 assessment. The Board of Review then introduced the appraisal and called Kenney to testify. Kenney testified that he has appraised at least seventy-five malls throughout the United States, mostly in the Midwest and along the East Coast. For the valuation of the subject property, he relied solely on the sales comparison approach, explaining that in Iowa, the sales comparison approach is preferred. While he considered the cost and income approaches, he testified that he did not develop them. He did not provide any rationale for his decision to omit these approaches. His conclusions were as follows.

Sales Approach	Income Approach	Cost Approach	Final Opinion of Value
\$10,400,000	Not Developed	Not Developed	\$10,400,000

Ultimately, we do not find it necessary to recite all of Kenney's testimony because we do not find it reliable or relevant. A Restricted Appraisal Report is for client use only; in this case, the Johnson County Assessor's Office. "When the intended users include parties other than the client, an Appraisal Report must be provided." THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE 2014-2015 EDITION. U-21, lines 659-660. We note Kenney was aware of this restriction because he explained in his report that "It is not to be relied upon by any third parties for any purpose, whatsoever." (Ex. D, p. 5).

Kenney's report provides only his conclusion of value. It contains no rationale or analysis of how he arrived at those conclusions. He included fourteen properties in his addendum identified as comparable sales. (Ex. D, Addendum F, pp. F2 – F9). However, he provides no adjustments to the sales and no narrative explanation of the analysis he purports to have conducted. (Ex. D, p. F9).

Although he testified about the comparable properties, he was unable to identify the specific factors he adjusted for each sale or the amount of the purported adjustments. Moreover, the scant information in the appraisal, and Kenney's testimony, indicates some of the properties he selected for comparison were questionable sales.

For example, Sale 2 sold as part of a bulk transaction; Sale 3 and 13, which were the same property, and Sale 8 transferred as a vacant property with intent to rehabilitate and resell; Sales 1, 8, 10, and 11 were freestanding properties; and numerous Sales were leased-fee transactions. Kenney provided no analysis or testimony of how he considered any of these aforementioned factors within his adjustment process or how they may have affected the sale prices of the comparable properties. Without this information, we are unable to determine whether Kenney's analysis is reasonable.

Kenney also acknowledged that investors purchased many of his comparable properties and that any anticipated modification costs might have affected the sales price, yet he does not explain how or if he considered this in his analysis. He also testified that the market had declined in about 2009, when four of the sales he submitted occurred. It is unknown how, if at all, he adjusted for this fact.

When questioned by Dillard's if he included any sales of anchor stores from an owner-occupant to another owner-occupant (department store to department store), he testified that he did not, although he acknowledged these types of sales did exist. Dillard's also asked if any of the sales he submitted were purchased by an owner-occupant/end-user; Kenney responded that an owner-occupant purchased Sale 11. The remaining sales Kenney submitted were investor purchases that were later re-sold or leased to tenants.

Conclusions of Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2013). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. §§ 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); see *also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

General Principles of Law Applicable to Assessment of Real Property

In Iowa, property is assessed for taxation purposes following Iowa Code section 441.21. Iowa Code subsections 441.21(1)(a) and (1)(b) require property subject to taxation to be assessed at its actual value, or fair market value. *Soifer v. Floyd County Bd. of Review*, 759 N.W.2d 775, 778 (Iowa 2009).

“Market value” is defined as the fair and reasonable exchange in the year in which the property is listed and valued between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and each being familiar with all the facts relating to the particular property.

§ 441.21(1)(b)(1). In determining market value, “[s]ales prices of the property or comparable property in normal transactions reflecting market value, and the probable availability or unavailability of persons interested in purchasing the property, shall be taken into consideration.” *Id.* Using the sales price of the property, or sales of comparable properties, is the preferred method of valuing real property in Iowa. *Id.*; *Compiano v. Polk Cnty. Bd. of Review*, 771 N.W.2d 392, 398 (Iowa 2009); *Soifer*, 759 N.W.2d at 779; *Heritage Cablevision v. Bd. of Review of Mason City*, 457 N.W.2d 594, 597 (Iowa 1990).

“[A]lternative methods to the comparable sales approach to valuation of property cannot be used when *adequate* evidence of comparable sales is available to *readily* establish market value by that method.” *Compiano*, 771 N.W.2d at 398 (emphasis added). “Thus, a witness must first establish that evidence of comparable sales was not available to establish market value under the comparable-sales approach before the other approaches to valuation become competent evidence in a tax assessment proceeding.” *Id.* (citing *Soifer*, 759 N.W.2d, at 782); *Carlson Co. v. Bd. of Review of Clinton*, 572 N.W.2d 146, 150 (Iowa 1997). The first step in this process is determining if *comparable* sales exist. *Soifer*, 759 N.W.2d at 783.

Whether other property is sufficiently similar and its sale sufficiently normal to be considered on the question of value is left to the sound discretion of the trial court. *Id.* at 783 (citing *Bartlett & Co. Grain Co. v. Bd. of Review of Sioux City*, 253 N.W.2d 86, 94 (Iowa 1977)). Similar does not mean identical and properties may be considered similar even if they possess various points of difference. *Id.* (other citations omitted).

“Factors that bear on the competency of evidence of other sales include, with respect to the property, its ‘[s]ize, use, location and character,’ and, with respect to the sale, its nature and timing. *Id.* (other citations omitted). Admitted sales must be adjusted “to account for differences between the comparable property and the assessed property to the extent any differences would distort the market value of the assessed property in the absence of such adjustments. *Id.* (other citations omitted).

If PAAB is not persuaded as to the comparability of the properties, then it “cannot consider the sales prices of those” properties. *Id.* at 782 (citing *Bartlett & Co. Grain*, 253 N.W.2d at 88). Where PAAB is convinced that comparable sales do not exist or cannot *readily* determine market value than other factors such as cost and income can be used. § 441.21(1)(b); *Compiano*, 771 N.W.2d at 398 (citing *Soifer*, 759 N.W.2d at 782); *Carlson Co.*, 572 N.W.2d at 150; § 441.21(2).

Burden of Proof

Initially, the burden of proof in an assessment protest rests with the taxpayer, who “must establish a ground for protest by a preponderance of the evidence.” *Compiano*, 771 N.W.2d at 396. However, if the taxpayer “offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor, the burden shifts to the board of review to uphold the assessed value.” *Id.* at 396-97; § 441.21(3). Failure to shift the burden of proof is not equivalent to failing to satisfy the burden of proof. *Id.* at 397. “Ultimately, the burden of proof is one of persuasion” which “comes into play after all of the evidence is introduced at hearing.” *Id.* at 397 n.3.

“The statute not only requires two disinterested witness, it also specifically requires the evidence offered by a disinterested witness to be competent before the burden of proof shifts to the board.” *Id.* at 398. “Evidence is competent under the statute when it complies with the statutory scheme for property valuation for tax assessment purposes.” *Id.* “[M]arket-value testimony by a taxpayer’s witness under a comparable-sales approach is ‘competent’ only if the properties upon which the witnesses based their opinions were comparable.” *Soifer*, 759 N.W.2d at 783 (noting “If the distorting sale factors or the points of difference between the assessed property and

the other property are not quantifiable so as to permit the required adjustments, the other property will not be considered comparable.”); *Boekeloo v. Bd. of Review of City of Clinton*, 529 N.W.2d 275, 279 (Iowa 1995); *Bartlett & Co. Grain*, 253 N.W.2d at 88. If they are, an opinion would “constitute ‘competent evidence’ and the burden of persuasion” shifts, “otherwise it does not shift.” *Bartlett & Co. Grain*, 253 N.W.2d at 88; *Soifer*, 759 N.W.2d at 783. However, the *Soifer* Court also stated the approach followed in Iowa is “[W]here the properties are reasonably similar, and a qualified expert states his opinion that they are sufficiently comparable for appraisal purposes, it is better to leave the dissimilarities to examination and cross-examination than to exclude the testimony altogether.” *Id.* (internal citations omitted). Just because the evidence is competent, however, does not mean it is credible. *Homemakers Plaza, Inc. v. Polk Cnty. Bd. of Review*, 2013 WL 105220 (Iowa Ct. App. Jan. 9, 2013) (unpublished) (citing *Soifer*, 759 N.W.2d at 785).

“Factors that bear on the competency of evidence of other sales include, with respect to the property, its ‘[s]ize, use, location and character,’ and, with respect to the sale, its nature and timing. *Id.* at 783 (other citations omitted). Likewise, “[t]he use to which comparable properties are put need not be identical to the use of the assessed property.” *Hy-Vee Food Stores, Inc. v. Carroll Cnty. Bd. of Review*, No. 3-546 / 12-1526 (Iowa Ct. App. October 2, 2013) (unpublished) (citing *Soifer*, 759 N.W.2d at 785). “Nonetheless, a difference in use does affect the persuasiveness of such evidence because ‘as differences increase the weight to be given to the sale price of the other property must of course be correspondingly reduced.’ ” *Soifer*, 759 N.W.2d at 785 (quoting *Bartlett & Co. Grain*, 253 N.W.2d at 93).

Here, PAAB finds Dillard’s presented competent evidence from two disinterested witnesses that the subject’s assessment is excessive and the burden shifts to the Board of Review to uphold the assessment. We ultimately conclude the Board of Review has not met its burden and the assessment of the subject should be reduced.

Claim of Over-Assessment

To prevail on a claim that an assessment is for more than authorized by section 441.21(1), the law requires two showings. *Heritage Cablevision*, 457 N.W.2d at 597. First, the record must show the property is over assessed; and second, what the fair market value of the property should be. *Id.*; *Boekeloo*, 529 N.W.2d at 276-277. If PAAB “determines the grounds of protest have been established, it must then determine the value or correct assessment of the property.” *Compiano*, 771 N.W.2d at 397. Here, PAAB “makes its independent determination of the value based on all the evidence.” *Id.*

Analysis of the Appraisals

The record contains three appraisals, two of which indicate the market value of the property is below the current assessment and a third that suggests the subject is under-assessed.

First, we reject Kenney’s appraisal in its entirety. Kenney’s appraisal is a Restricted Appraisal that contains no analysis or explanation his conclusion of value. We further note that he did not explain, in either his report or his testimony, his rationale for not developing the cost or income approaches to value. Moreover, while Kenney asserts he considered fourteen comparable properties in arriving at his conclusions, only the addendum to the appraisal includes sales, and there are no quantitative or qualitative adjustments to these properties.

Kenney’s testimony also indicated that many of the sales were leased-fee, investor purchases, bulk-purchases, or freestanding buildings compared to the subject’s anchor design. While these sales may have been viable transactions worthy of analysis, Kenney failed to articulate what adjustments, to each of the comparable properties, were necessary and therefore fails to support his conclusions. Ultimately, we find Kenney’s testimony unreliable and unpersuasive because the restricted appraisal contains insufficient data for this Board to review to determine whether the conclusion reached therefrom is reasonable or supported.

Sales Approaches to Value

Turning to Dillard's own appraisals, both Frandson and Garoon developed the sales comparison approach to value, but used different methodology.

Frandson testified that he found plenty of sales of anchor department stores. He submitted six sales that occurred between January 2007 and July 2013.

Examining Frandson's sales and testimony, we find that motivations of the buyers, in some of the sales, may have affected the sales price. For example, Sale 1 sold from a tenant to the mall owner. Frandson agreed that a mall owner might be motivated to purchase anchor space. For this reason and because the sale was a purchase from an adjoining landowner, which is specifically listed as an abnormal sales transaction in Iowa Code section 441.21(1)(b), we give Sale 1 no consideration.

Moreover, we believe many of the other sales that were purchased by end-users would have also had some modification costs that would have been considered by the purchaser. Frandson agreed Sale 3 likely had remodeling costs. His report indicates the grantee (Von Maur) re-finished the property "to a much more upscale design." Consistent with appraisal methodology, we believe positive adjustments should have been made to these sales prices to account for required modifications to ready the property for use. APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 412-14 (14th ed. 2013). Without adjustments, the price ultimately reflects a value less than its full utility to the purchaser. The case law concerning property assessment is clear that a building is not valued as an empty shell, but that the assessor may properly consider the property's conditions as they are. *Soifer*, 759 N.W.2d at 787 (citing *Lake City Elec. Light Co. v. McCrary*, 132 Iowa 624, 110 N.W. 19, 20 (1906) (stating that assessor was entitled to consider property as a going concern "instead of mere aggregation of dead material.")). Our analysis of Frandson's sales approach acknowledges that his failure to account for these modification costs may result in an undervaluation of the subject.

In light of the fact that the subject is a healthy mall with high occupancy, we question the necessity of 20% negative adjustment to Sale 5 (Frisco, TX) and Sale 6 (Evansville, IN) for market conditions (time adjustment). We recognize that Garoon made positive date of sale adjustments to all of his sales comparables, including in his

consideration of the Frisco, TX and Evansville, IN sales. As such, the Board finds the 20% negative adjustment should be removed from comparable sales 5 and 6.

Giving no consideration to Sale 1 and after removing the negative market adjustment from Sales 5 and 6, Frandson's adjusted sales range from \$33.97 to \$60.00 per-square-foot. The average and median of the range are approximately \$48.50 per-square-foot. We believe that considering even moderate conversion costs incurred by the purchasers, the upper end of Frandson's range, at \$52.50 per-square-foot, or \$6,800,000 rounded, is more indicative of the subject property's market value.

Garoon developed all three approaches to value, using a multiple regression analysis to make adjustments in the sales comparison approach. He relied on the same dataset used in the development of the multiple regression analysis for his income approach.

First, Garoon submitted ten sales for analysis that occurred between 2001 and 2011, with nine of the sales occurring in 2007 or prior. After adjustments, his sales suggest a range of value for the subject between \$49.96 and \$56.43 per-square-foot, with an average of \$53.15 per-square-foot. Garoon indicates the subject's value is likely between \$50.00 to \$54.00 per-square-foot, or from \$6.5 million to \$7 million. We find this evidence supports the modifications to Frandson's sales approach discussed above.

Cost and Income Approaches

Despite the appraisers' best efforts to find reasonable sales; we are not convinced that the sales comparison approach alone should be used to conclude the subject's fair market value. *Heritage Cablevision*, 457 N.W.2d at 598 ("The fact that one litigant calls witnesses who purport to testify as to comparable sales does not in itself establish that market value can readily be determined in that manner. That determination requires a qualitative evaluation rather than a quantitative evaluation."). Of the universe of sales submitted by Garoon and Frandson, only three occurred after January 1, 2011. Of these, we previously concluded one sale (Frandson Comparable 1) should not be given any consideration. Further, we also recognize a distinct lack of

comparable sales in Iowa and the Midwest. The majority of sales relied on by Garoon and Frandson occurred not only outside of Iowa, but also outside of the Midwest.

Because of the lack of sales both physically approximate to the subject property and chronologically near the value date at issue, we find it necessary to examine the other approaches of value offered by the appraisers to determine the subject's fair market value as of January 1, 2013.

Consistent with Iowa law, when sales alone cannot adequately establish the subject's value, we look to other valuation methods to determine the property's correct value. § 441.21(1)(b).

Garoon's income approach used a dated data set that relied on twenty-six leases that commenced between 1976 and 2012. (Ex. 2, p. 41). Fifteen of those leases occurred prior to 2000, and twenty-two occurred prior to 2010. He selected six leases from the list that he considered the most relevant. We note they were also among the oldest leases having occurred between 1976 and 2007, with five of them occurring in 1993 or prior. Like the sales comparison analysis, we simply do not believe data from the 1970's or even early 2000's is relevant to a 2013 market value opinion.

Considering only rents entered into on or after 2006, the total rents range from \$3.20 to \$8.52 per-square-foot, with an average of \$5.10 per-square-foot. This more recent data shows that Garoon's rent conclusion of \$4.00 per-square-foot for the subject may not be consistent with the market and would undervalue the subject. Substituting the average rent of the post-2006 leases of \$5.10 into Garoon's income approach, the subject's estimated value is approximately \$7.7 million.

Garoon is the only appraiser that developed the cost approach. Although he asserts he gave it no consideration in his final opinion of value, we find he used typical methodology to develop it. However, he asserts there is a \$1,534,122 deduction required for external (economic) obsolescence. He bases his external obsolescence calculation on the fact that his sales and income approaches concluded at lower valuations, and asserts this demonstrates a "clear indication of external or economic obsolescence." (Ex. 2 p. 29). Because we find his income approach may undervalue the subject, we find his reduction for external or economic obsolescence is overstated. Moreover, all of the testimony was consistent, in that the subject property was located in

a healthy mall with low vacancy rates. Thus, we are not persuaded the subject suffers from the amount of external obsolescence Garoon prescribed. Removing the external obsolescence from Garoon's cost analysis, the subject property has an indicated value of \$8,400,000 rounded.

Based on this Board's evaluation of the totality of the evidence, we find the subject property is over assessed; however, both Frandson and Garoon's appraisals reach reconciled values that undervalue the subject property.

Understanding that appraisal is not an exact science and taking into account the flaws we find in both appraisals, we conclude a new value for the subject property of \$7,250,000. In doing so, we weight Garoon's modified income approach (\$7,700,000) equally along with Frandson's amended sales comparison approach (\$6,800,000). *Sears, Roebuck & Co. v. Sieren*, 484 N.W.2d 616 (Iowa App. Ct. 1992) ("The heart of most assessment cases is the evidence of experts applying, at best, their professional judgments within a context of variables which can in no definite way be objectively conclusive.").

Order

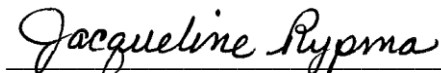
IT IS THEREFORE ORDERED the January 1, 2013, assessment of the subject property as set by the Board of Review is modified to \$7,250,000

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action. Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.

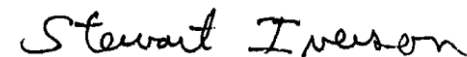
Dated this 18th day of November, 2015.



Karen Oberman, Presiding Officer



Jacqueline Rypma, Board Member



Stewart Iverson, Board Chair

Copies to:

John Lande

Bruce Baker

Travis Weipert